HSBC BANK MALAYSIA BHD

v.

STARNIT MANUFACTURING SDN BHD & ORS

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL SUIT NO: 22-1049-98]
5 DECEMBER 2001

CIVIL PROCEDURE: *Pleadings - Defence - Plaintiff granting defendant time to file defence - Whether a concession that defence has raised triable issues - Whether defence should have been struck out*

This was the defendants' appeal against the decision of the senior assistant registrar allowing the plaintiff's application to strike out the defendant's defence. The plaintiff did not file an application for summary judgment because the defendants had asked for time to file a defence, which the plaintiff granted.

Held:

[1] In the circumstances, since it was the plaintiff's case that it gave the defendant time to file a defence when it could have readily moved for summary judgment, it could be concluded by the plaintiff's conduct that it had conceded that the defence had raised triable issues. (p 280 f-g)

[Appeal allowed.]

For the appellant/defendants - A Albert; M/s Darshan Singh & Co
For the respondent/plaintiff - Sarisffuddin Ismail; M/s Cheong Wai Meng & Van Buerle

Reported by Suresh Nathan

JUDGMENT

RK Nathan J:

Facts

By a letter of offer dated 23 June 1997 the plaintiff granted the first defendant at its request, overdraft facilities amounting to RM6,200,000 upon terms and conditions stated therein. The second and third defendants are the directors, shareholders and also the guarantors of the first defendant in respect of the said overdraft facilities. As at 25 September 1998 the first defendant owed the plaintiff the sum of RM2,908,652.37. The defendants having failed to pay the said sum in spite of formal demands being made, the plaintiff filed this

suit to recover the same. The first defendant denied ever signing any documents in respect of the said overdraft facilities. The defendants contended that the signatures on the documents were forged. The plaintiff took out an application (encl. 17) to strike out the defence and to enter judgment for the sum prayed for. Having heard arguments and having reserved judgment the learned senior assistant registrar granted the plaintiff an order in terms of encl. 17, on 28 February 2001. Against that order the defendants appealed. Having heard full arguments on 31 October 2001, I allowed the appeal and fixed a date for case management. This is the plaintiff's appeal against my decision.

Findings Of The Court

In the course of his submission counsel for the plaintiff conceded that even before the hearing of encl. 17, the plaintiff had in fact amended the statement of claim three times. He then submitted that the defendants had not challenged the plaintiff's claim as stated in the supporting affidavit that the defendants owed the plaintiff the sum of RM2,908,652.37 as of 25 September 1998. I then asked counsel for the plaintiff why he did not file an application for summary judgment if in his view the defendants had not challenged the fact that they owed the plaintiff the said sum. Counsel's reply surprised me. The plaintiff didn't file for summary judgment because the defendants had asked for time to file a defence and he had granted time. A perusal of the file showed that the writ was initially filed on 14 December 1998. It was then amended on 26 February 1999. The defence was then filed on 16 April 1999. The plaintiff then amended for the third time on 6 July 1999. The defence had remained the same. The plaintiff then on 28 October 2000 filed encl. 17 to strike out the defence that was filed on 16 April 1999. The plaintiff's explanation as to why it didn't proceed with summary judgment because the defendant had sought time to file a defence is unacceptable, since the defence had already been filed six months earlier. In the circumstances since it was the plaintiff's case that it gave the defendant time to file a defence when it could have readily moved for summary judgment, all I can conclude by the plaintiff's conduct is that it had conceded that the defence had raised triable issues. A plea of forgery and conspiracy as raised in the defence are serious issues that ought to be tried. I therefore allowed the appeal with costs which I fixed at RM300 since the entire proceeding did not last more than twenty minutes.